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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/428,035 | 10/27/1999 | R MICHAEL MCGRADY | D-1123 | 4121 |

28995 7590 10/10/2003

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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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DATE MAILED: 10/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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|--|--------------------------------------|---------------------------------------|--|
| Notification of Non-Compliance With 37 CFR 1.192(c) | Application No. 09/428,035 | Applicant(s) MCGRADY ET AL. | |
| | Examiner Milan S Kapadia | Art Unit 3626 | |

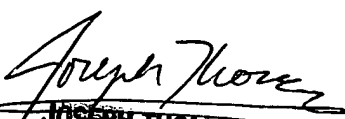
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 17 July 2003 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☒ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☒ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet


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Continuation of 9. Other (including any explanation in support of the above items): MPEP § 2106 specifically states that a statement must be included that the claims of the group do not stand or fall together and, in the argument section of the brief (37 CFR 1.192(c)(8)), appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable. If an appealed ground of rejection applies to more than one claim and appellant considers the rejected claims to be separately patentable, 37 CFR 1.192(c)(7) requires appellant to state that the claims do not stand or fall together, and to present in the appropriate part or parts of the argument under 37 CFR 1.192(c)(8) the reasons why they are considered separately patentable. The absence of such a statement and argument is a concession by the applicant that, if the ground of rejection were sustained as to any one of the rejected claims, it will be equally applicable to all of them. 37 CFR 1.192(c)(7) is consistent with the practice of the Court of Appeals for the Federal Circuit indicated in such cases as *In re Young*, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991); *In re Nielson*, 816 F.2d 1567, 2 USPQ2d 1525 (Fed. Cir. 1987); *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986); and *In re Sernaker*, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983). 37 CFR 1.192(c)(7) requires the inclusion of reasons in order to avoid unsupported assertions of separate patentability. The reasons may be included in the appropriate portion of the "Argument" section of the brief. For example, if claims 1 to 4 are rejected under 35 U.S.C. 102 and appellant considers claim 4 to be separately patentable from claims 1 to 3, he or she should so state in the "Grouping of claims" section of the brief, and then give the reasons for separate patentability in the 35 U.S.C. 102 portion of the "Argument" section (i.e., under 37 CFR 1.192(c) (8) (iii)).